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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 GAY L. JOHNSON,

12 Plaintiff,

13 v.

14 LPL FINANCIAL SERVICES,

15 Defendant.
16

CASE NO. 07-0233-W(LSP)

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S REQUEST
FOR ATTORNEYS FEES

17 On July 25, 2007, the Court conducted a Settlement Conference
18 in this action, at which a settlement was achieved. As part of the
19 settlement, the parties consented to the jurisdiction of the
20 undersigned to decide, *inter alia*, all disputes regarding settlement
21 terms arising during the documentation thereof not resolved by the
22 parties themselves. The parties also agreed that any decision by
23 the undersigned with regard to the undersigned's decision regarding
24 settlement terms, would be final, binding and non-appealable.

25 On August 31, 2007, Plaintiff's counsel informed the Court by
26 letter that a dispute had arisen between the parties regarding the
27 proper issuance of IRS Form 1099s after payment of the agreed
28 settlement amount (hereafter "IRS dispute").

1 On September 5, 2007, Defendant's counsel responded via letter
2 to Plaintiff's counsel's August 31, 2007 letter.¹ On October 4,
3 2007, Plaintiff's counsel responded to Defendant's counsel's
4 September 5, 2007 letter.

5 On October 9, 2007, the Court ordered Plaintiff's and
6 Defendant's counsel to appear for a hearing regarding the IRS
7 dispute. In the October 9, 2007 Order, the Court stated:

8 To the extent a party has taken a clearly erroneous
9 position regarding the IRS issues raised in Plaintiff's
10 letter brief of August 31, 2007, Defendant's letter
11 brief of September 5, 2007 and Plaintiff's letter
12 brief of October 4, 2007, that party shall be ordered
13 to pay the other party's expenses in litigating the
14 issues discussed in those letter briefs.

15 On October 10, 2007, the hearing was held. Plaintiff's and
16 Defendant's counsel attended the hearing. At the hearing,
17 Plaintiff's counsel recognized that the position he held, as stated
18 in his August 31 and October 4, 2007 letters, was erroneous.

19 At the October 10, 2007 hearing, Defendant's counsel requested
20 that Plaintiff pay Defendant's attorneys fees incurred in litigating
21 the IRS dispute. The Court ordered that Defendant file a
22 declaration stating the time and fees incurred in researching and
23 litigating the dispute.

24 On October 17, 2007, the Court issued a written Order Regarding
25 Form 1099 Issuing Requirements After Payment of Settlement. The
26 October 17, 2007 Order found Defendant's position to be correct.

27 On October 16, 2007, Defendant's counsel submitted the
28 declaration, as ordered. On October 31, 2007, Plaintiff's counsel

¹The Court notes that prior to August 31, 2007, Plaintiff's and Defendant's counsel engaged in numerous discussions via e-mail regarding the IRS dispute. Defendant's counsel's September 5, 2007 letter includes as exhibits numerous e-mails between counsel regarding the dispute.

1 submitted a Reply to Defendant's counsel's declaration.

2 Thereafter, the Court requested that Defendant's counsel submit
3 to it *in camera*, a supplemental declaration containing Defendant's
4 counsel's unredacted billing statements regarding the IRS dispute.
5 On November 26, 2007, Defendant's counsel submitted to the Court *in*
6 *camera*, a Supplemental Declaration, attached to which were
7 unredacted billing statements regarding the IRS dispute.
8 Plaintiff's counsel was served with a redacted copy of Defendant's
9 counsel's billing statements. On November 30, 2007, Plaintiff's
10 counsel filed a Supplemental Reply to the Supplemental Declaration
11 of Defendant's counsel.

12 The Court, having reviewed the letters, briefs, declarations of
13 counsel, and billing statements, and GOOD CAUSE APPEARING, HEREBY
14 ORDERS:

15 It is clear to the Court that by late August 2007, or by early
16 September 2007, the parties could have resolved the IRS dispute. If
17 the parties had done so, it is unlikely that Defendant would have
18 sought its attorneys fees incurred in litigating the dispute.

19 Therefore, taking into account the events starting in early
20 September 2007, the approach each party utilized in resolving the
21 dispute and the expenses incurred by Defendant in establishing its
22 position with regard to the dispute, the Court ORDERS that Plaintiff
23 pay Defendant the sum of \$8,610.00 (including costs), for attorneys
24 fees and costs incurred in litigating the IRS dispute.

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1 Payment of Defendant's attorneys fees, as ordered herein, is
2 stayed until either the settlement agreed to by the parties is
3 confirmed, or a final judgment is entered.

4 IT IS SO ORDERED.

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6 DATED: December 27, 2007

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8 
9 Hon. Leo S. Papas
U.S. Magistrate Judge